

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

MICHAEL A. KOWALCZUK

Plaintiff,

Case No.: 2:19-cv-1230

VS.

SERGEANT ERIC GIESE, and  
VILLAGE OF MOUNT PLEASANT

## Defendants.

## AMENDED COMPLAINT

**NOW COMES** the above-named plaintiff, Michael A. Kowalcuk, by his attorneys, Martin Law Office, S.C., and as and for his amended claims for relief against the above-named defendants, alleges and shows to the Court as follows:

### **Nature of the Case**

1. This is a civil action, pursuant to 42 U.S.C. § 1983, for redress of the deprivation, under color of law, of Michael A. Kowaleczuk's rights secured by the Fourth and Fourteenth Amendments to the United States Constitution.

## **Jurisdiction and Venue**

2. This court has jurisdiction under 28 U.S.C. §§ 1331 and 1343(a)(3).
3. Venue in the Eastern District of Wisconsin is proper under 28 U.S.C. 1391(b).

## **Introduction**

4. This amended complaint is intended to relate back to the date of the original complaint under Rule 15(c)(1)(C) of the Federal Rules of Civil Procedure.<sup>1</sup>

5. This amended complaint is not intended to imply the invalidity of any conviction, judgment, or sentence imposed against the plaintiff.

6. The allegations in this amended complaint are intended to conform to and incorporate, by reference, squad camera video footage, taken September 3, 2013, which depicts the factual basis of the plaintiff's claims, as alleged herein.

## **Parties**

7. That the plaintiff, Michael A. Kowalcuk, is an adult citizen and resident of the State of Wisconsin, residing at 5826 Sunset Blvd., Mount Pleasant, Wisconsin 53406.

8. That the defendant, Village of Mount Pleasant, is a municipality duly incorporated, organized, and existing under the laws of the State of Wisconsin; that the Mount Pleasant Police Department is an agency of the Village of Mount Pleasant.

9. That the defendant, Eric J. Giese, is an adult resident of the State of Wisconsin; that, at all times material hereto, Eric J. Giese was employed by the defendant, Village of Mount Pleasant, as a police officer with the Mount Pleasant Police Department; that, at all times material hereto, Eric J. Giese was acting within the scope of his employment and authority as a Village of Mount Pleasant police officer; that the plaintiff sues Eric J. Giese in his individual and official capacities.

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<sup>1</sup> This amended complaint is filed in response to the defendants' Motion to Dismiss, pursuant to 12(b)(6), which was filed on September 18, 2019. (Dkt. 5, Def. Mot. to Dismiss, [of Record]). Pursuant to Rule 15(a)(1)(B) of the Federal Rules of Civil Procedure, a party "may amend its pleading once, as a matter of course" within 21 days after service of a motion under Rule 12(b).

### **General Allegations**

10. That, at all times material hereto, the defendant Eric J. Giese acted under color of state law.

11. That on September 3, 2013, at approximately 12:30 am, Michael A. Kowalcuk (“Kowalcuk”) was operating his motor vehicle in the Village of Mount Pleasant; that Kowalcuk was driving to the home that he shared with his parents.

12. That, upon information and belief, at approximately 12:30 am, the defendant, Eric J. Giese (“Giese”) was operating a marked Village of Mount Pleasant squad car; that Giese observed Kowalcuk’s vehicle turn onto 16<sup>th</sup> street, in the Village of Mount Pleasant, Wisconsin; that Giese elected to follow Kowalcuk eastbound on 16<sup>th</sup> street.

13. That, at its intersection with South Emmersen Road, the speed limit for eastbound traffic on South 16<sup>th</sup> Street reduces from thirty-five miles per hour to twenty-five miles per hour; that, upon information and belief, the defendant, Giese, followed Kowalcuk eastbound on South 16<sup>th</sup> Street.

14. That Giese activated his squad lights after Kowalcuk passed South Emmerson Road.

15. That, upon viewing Giese’s squad lights, Kowalcuk drove his vehicle to his parents’ house at 5826 Sunset Boulevard, Mount Pleasant.

16. That Kowalcuk parked his vehicle in front of his parents’ home and slowly opened the driver’s side door.

17. That, after stopping his squad car, Giese exited with his firearm aimed at Kowalcuk; that Giese yelled the following instruction to Kowalcuk: “Stop! Get out of the car! Stay in the car, right now!”

18. That Giese's instructions were contradictory; that Kowalcuk immediately stopped all movement when he heard Giese yell "Stop!"

19. That Giese approached Kowalcuk with his firearm aimed at Kowalcuk.

20. That Giese yelled at Kowalcuk: "Show me your hands!"; that Kowalcuk put both of his hands up and in view of Giese.

21. That within approximately one second of instructing Kowalcuk to show his hands, Giese instructed Kowalcuk: "Stop the car!"; that Kowalcuk's vehicle was already stopped.

22. That within approximately one second of instructing Kowalcuk to stop the car, Giese instructed Kowalcuk: "Get out of the car!"; that, simultaneously, Giese grabbed Kowalcuk by Kowalcuk's left arm and used physical force to remove Kowalcuk from the vehicle.

23. That as Giese was removing Kowalcuk from the vehicle, Giese yelled at Kowalcuk: "Get out of the car! Get on the ground"

24. That Kowalcuk was resistive and asked Giese: "What did I do, man?"

25. That in response to Kowalcuk's question, Giese yelled: "Get on the ground!"; that, simultaneously, Giese pulled Kowalcuk's arm and used physical force to push Kowalcuk to the pavement; that the force exerted Giese combined with Giese's control of Kowalcuk's left arm caused Kowalcuk to turn and fall onto his backside.

26. That once Kowalcuk was on the ground, Giese continued to maintain physical control of Kowalcuk by gripping Kowalcuk's left arm; Giese again yelled at Kowalcuk: "Get on the fucking ground!"; that, at the same time, Giese placed his other hand behind Kowalcuk's

head and pushed Kowalcuk onto his right side; that Giese then placed his weight on top of Kowalcuk.

27. That, as Giese was on top of Kowalcuk, Kowalcuk pleaded: “Let go, man.”

28. That Giese yelled at Kowalcuk “Put your hands behind your back! Do it now! Put your hands behind your back and get on your stomach! Get on your stomach! put your hands behind your back! Do it now!”

29. That Giese allowed Kowalcuk to position himself on his stomach with his hands behind his back; that Giese yelled: “Put your hands behind your back, or you’re going to get tased! *(sic)*”

30. That Kowalcuk put his hands behind his back, at which point Giese secured Kowalcuk’s hands in handcuffs.

31. That Kowalcuk’s mother and father, Nancy Kowalcuk and Jeff Kowalcuk, were inside of their home and observed Giese use force on Kowalcuk; that Nancy and Jeff Kowalcuk exited their home; that Giese put his hand over his firearm and threatened Nancy and Jeff Kowalcuk: “Stay back! Stay back.”

32. That Kowalcuk was extremely frightened by Giese; that Kowalcuk remained handcuffed at all times; that Kowalcuk yelled: “Mom!”

33. That, contradictory to Giese’s instructions, Kowalcuk attempted to reposition himself on the ground to be able to see his mother; that Giese again grabbed Kowalcuk; that Jeff Kowalcuk yelled to Giese: “Hey, hey, hey!”; that Giese yelled at Jeff Kowalcuk to “Stay back!”; that Nancy and Jeff Kowalcuk were frightened by the actions and demeanor of Giese.

34. That Kowalcuk did not stay on his stomach and lifted himself to a seated position; that Giese tackled Kowalcuk back to the pavement, yelling: “Stay the fuck down!”;

that Kowalcuk kicked Giese; that, as Kowalcuk was on the ground, Giese punched Kowalcuk in the face with his right hand.

35. That Giese got off of Kowalcuk and Kowalcuk stood up; that Giese yelled at Kowalcuk: "stay back!"; that Kowalcuk then turned to face away from Giese to speak to his mother; that, as Kowalcuk's back was turned to Giese, Giese shot Kowalcuk with a taser; that Kowalcuk fell to the pavement, striking his head; that Kowalcuk lost conscious.

36. That Kowalcuk regained consciousness approximately eleven seconds after being tasered by Giese and falling to the ground; that Kowalcuk was confused and frightened when he regained conscious and began to move; that the taser leads remained in Kowalcuk and Giese again employed the taser to debilitate Kowalcuk.

**First Claim for Relief: Excessive Force – Against Eric J. Giese**

37. Plaintiff realleges and incorporates herein by reference the allegations of the preceding paragraphs.

38. The uses of force employed by Eric J. Giese in the course of arresting Michael A. Kowalcuk, including, but not limited to, pulling Kowalcuk from his vehicle, pushing Kowalcuk onto the ground, exerting physical pressure onto Kowalcuk on the ground, handcuffing Kowalcuk, tackling Kowalcuk to the ground, attacking Kowalcuk, punching Kowalcuk, and twice using a taser to debilitate Kowalcuk, were not objectively reasonable under the Fourth Amendment to the United States Constitution.

39. The conduct alleged constituted unreasonable and excessive force and violated Michael A. Kowalcuk's right to be free from unreasonable seizures under the Fourth and Fourteenth Amendments to the United States Constitution.

40. Defendant Eric J. Giese's unreasonable and excessive use of force against Michael A. Kowalcuk was a cause of the injuries sustained by Michael A. Kowalcuk, including the violation of his constitutional rights, loss of liberty, past and future pain, suffering, emotional distress, mental anguish, past and future medical expenses, disability, loss of enjoyment of life and dignity, and other compensable injuries and damages, all to the damage of Michael A. Kowalcuk in an amount to be determined at a trial of this matter.

41. Defendant Eric J. Giese acted with malice or in reckless disregard of Michael A. Kowalcuk's federally protected rights.

**Second Claim for Relief: *Monell* Claim against Defendant Village of Mount Pleasant (Policy, Practice, and/or Custom; Failure to Train and Supervise)**

42. Plaintiff realleges and incorporates herein by reference the allegations of the preceding paragraphs.

43. Upon information and belief, defendant Eric J. Giese acted within the written or unwritten policies, practices, and/or customs of the Village of Mount Pleasant Police Department, an agency of the defendant, Village of Mount Pleasant, when he employed excessive force against Michael A. Kowalcuk and when he arrested Michael A. Kowalcuk without probable cause, as alleged.

44. Upon information and belief, the defendant, Village of Mount Pleasant, failed to adequately train and supervise its police officers, including Eric J. Giese, regarding the use of force and probable cause for arrest.

45. Upon information and belief, in light of the foreseeable consequences due to the failure to adequately train and supervise police officers as alleged, defendant Village of Mount Pleasant was deliberately indifferent to the rights of Michael A. Kowalcuk and other persons in

Mount Pleasant by failing to adequately train and supervise its police officers including Eric J. Giese.

46. Upon information and belief, defendant Village of Mount Pleasant's law enforcement policies, practices, and/or customs and its failure to adequately train and supervise its police officers, including Eric J. Giese, was a cause of the violations of Michael A. Kowalcuk's constitutional right to be free from unreasonable seizures, in the form of excessive force, and false arrest.

47. Upon information and belief, defendant Village of Mount Pleasant's law enforcement policies, practices, and/or customs and its failure to adequately train and supervise its police officers, including Eric J. Giese, caused Michael A. Kowalcuk to injuries, including the violation of his constitutional rights, loss of liberty, past and future pain, suffering, emotional distress, mental anguish, past and future medical expenses, disability, loss of enjoyment of life and dignity, and other compensable injuries and damages, all to the damage of Michael A.

**Third Claim for Relief: Punitive Damages against Eric J. Giese**

48. Plaintiff realleges and incorporates herein by reference the allegations of the preceding paragraphs.

49. That upon information and belief, at all times material hereto, the defendant, Eric J. Giese, acted with intentional disregard of the rights of the plaintiff, Michael A. Kowalcuk, in such a manner as to subject Eric J. Giese to punitive damages in an amount to be determined at a trial of this matter.

**WHEREFORE**, the plaintiff demands judgment against defendants, Village of Mount Pleasant and Michael A. Kowalcuk, as follows:

A. declaring that the defendant, Eric J. Giese violated the plaintiff, Michael A. Kowalcuk's constitutional rights by using excessive force against him and by falsely arresting him; that the defendant, Village of Mount Pleasant, has liability for Eric J. Giese's actions, as alleged;

B. for compensatory damages against defendants, Village of Mount Pleasant, and Eric J. Giese, jointly and severally, in an amount to be determined at trial;

C. for punitive damages against defendant, Eric J. Giese, in an amount to be proved at trial;

D. for plaintiff's attorneys' fees, pursuant to 42 U.S.C. § 1988

E. for such further and additional relief as this Court may deem equitable and just.

**PLEASE TAKE NOTICE THAT THE PLAINTIFF DEMANDS A TRIAL IN THE  
ABOVE-ENTITLED ACTION.**

Dated: 10/9/2019

**MARTIN LAW OFFICE, S.C.**  
Attorney for Plaintiff(s)

*Electronically Signed by Drew J. DeVinney*

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Drew J. De Vinney  
State Bar No. 01088576

**ADDRESS**

7280 S. 13th St., Ste.102  
Oak Creek, WI 53154  
414-856-2310 (office)  
414-856-2677 (direct fax)  
drew@martin-law-office.com